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CONVICTION UPHELD IN ATTACK ON LIBYAN STUDENT
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DENVER

A state appeals court today affirmed the assault and conspiracy conviction of a former Green Beret who claimed he was working for the CIA when he shot a Libyan dissident attending Colorado State University in Fort Collins.

Eugene A. Tafoya had argued on appeal that his right to a fair trial was violated by extensive publicity and the ''armed camp'' atmosphere of the courtroom, which had been placed under tight security for his trial.

The Colorado Court of Appeals rejected his arguments in an unanimous opinion.

Tafoya, initially charged with attempted first-degree murder, was convicted of misdemeanor third-degree assault charges for twice shooting Libyan dissidentFaisal Zagallai while posing as a representative of a computer company during an October 1980 visit to the graduate student's home.

Larimer County District Judge J. Robert Miller sentenced Tafoya to the maximum two-year term in January 1982, but he was freed on $10,000 bond pending appeal.

At his trial, the former Green Beret from Truth or Consequences, N.M., claimed he had been sent by the CIA to ''warn'' Zagallai to tone down his outspoken criticism of Libyan leader Moammar Khadafy. He maintained he fired in self-defense during an argument with Zagallai.

The agency denied Tafoya ever worked for it and said he actually had been hired by renegade CIA agent Edwin Wilson, who later was convicted of smuggling arms to Libya. A defense lawyer called Tafoya ''the soldier left out in thecold.''

In his appeal, Tafoya argued without effect that Miller should have granted him a change of venue because of extensive news coverage.

The appeals court said Tafoya had failed to convince it that publicity was so ''massive, pervasive and prejudicial as to create a presumption of an unfair trial or ... actual hostility on the part of jurors.''

Additionally, the court said Tafoya had failed during the trial to exhaust his opportunities to reject jurors he believed might be prejudiced against him.

The court also rejected Tafoya's claim that the ''armed camp'' atmosphere of the courtroom ''robbed him of his presumption of innocence.''

''A defendant has the right to be free from excessive guards except where special circumstances dictate the use of enhanced security,'' the court said. ''Here, threats upon the defendant's life and the possibility of terrorist acts necessitated the use of extensive security measures.

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''Furthermore, once defendant voiced objections ... the extra security was concealed from the jury as much as possible.''

Tafoya also failed to convince the court that Miller erred in not polling jurors on whether they had seen news reports of Libyan ''hit squads'' said to have been dispatched to assassinate dissidents. The court said jurors had been warned to avoid the news reports, and there was nothing to indicate they had not followed instructions.

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